Public Prosecutor v Ling, Ching-Kuan

HIGH COURT (SHAH ALAM) — CRIMINAL TRIAL NO 45–131 OF 2005
KN SEGARA J
8 MAY 2006

Criminal Law — Dangerous Drugs Act 1952 — ss 12(2) and (3) — Possession of Ketamine — Sentence

Criminal Procedure — Sentence — Drug possession — 1637.5g of ketamine — Accused a foreigner — Accused not innocent carrier — Evidence of involvement in organized drug activity — Sentence

The Taiwanese accused was caught at KLIA in possession of 1637.5g of ketamine. The drugs were found in three packets strapped upon his body. The facts showed that the accused was not an innocent carrier and was in fact involved in organized drug activity. The accused was initially charged with drug trafficking under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('the Act'). However, the prosecution later proffered the accused an alternative charge for unauthorized possession of 1637.5g of ketamine — an offence under s12(2) and punishable under s 12(3) of the Act. The accused pleaded guilty thereto.

Held, sentencing the accused to five years' imprisonment:

Public interest called for a deterrent sentence and although the sentence of five years' imprisonment was manifestly low when the facts suggested the offence of trafficking had been committed, yet this was the maximum term of imprisonment permitted under the law (under s 12(3) of the Act). The accused escaped facing the death penalty due to the benevolence of the Public Prosecutor. The courts must ensure no wrong signals are sent to foreigners that Malaysia is a haven for drug activities with risks of heavy sentences minimal (see para 9).

[Bahasa Malaysia summary

Tertuduh berbangsa Taiwan telah ditangkap di KLIA dengan milikan 1637.5g ketamine. Dadah tersebut dijumpai dalam tiga paket di atas badannya. Fakta-fakta menunjukkan bahawa tertuduh bukanlah pembawa yang tidak bersalah dan sememangnya terlibat dalam satu aktiviti dadah yang dirancang. Tertuduh telah dituduh, pada mulanya untuk pengedaran dadah di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 ('Akta tersebut'). Walau bagaimanapun, pendakwa raya telah memberikan tertuduh satu tuduhan alternatif bagi satu milikan tanpa kebenaran 1637.5g ketamine, satu kesalahan di bawah s 12(2) dan boleh dihukum di bawah s 12(3) Akta tersebut. Tertuduh telah mengaku bersalah.

Diputuskan, menjatuhkan hukuman lima tahun penjara ke atas tertuduh:

Kepentingan awam memerlukan hukuman yang merupakan langkah pencegahan dan walaupun hukuman lima tahun penjara adalah terlalu rendah apabila fakta-fakta mencadangkan kesalahan pengedaran dadah telah dilaksanakan, akan tetapi ini merupakan tempoh maksimum penjara yang dibenarkan di bawah undang-undang (di bawah s 12(3) Akta tersebut. Tertuduh telah melepaskan diri daripada hukuman mati akibat daripada kemurahan hati pendakwa raya. Mahkamah perlu memastikan bahawa isyarat yang salah telah dihantar kepada orang asing bahawa Malaysia adalah tempat perlindungan bagi aktiviti dadah dengan risiko hukuman besar yang minimum (lihat perenggan 9).

[*Editorial Note:* Under s 12(3) of the Act, the accused was liable on conviction to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both].]

Notes

For cases on drug possession, see 5(1) *Mallal's Digest* (4th Ed, 2004 Reissue) paras 3348–3355.

For cases on ss 12(2) and (3) of the Dangerous Drugs Act 1952, see 4 *Mallal's Digest* (4th Ed, 2003 Reissue) paras 153–154.

Legislation referred to

Dangerous Drugs Act 1952 ss 12(2), (3), (39B(1)(a)

Wan Shaharuddin bin Wan Ladin (Deputy Public Prosecutor, Attorney General's Chambers) for the prosecution.

Inderjit Singh (Rabinder Singh with him) (Rabinder Budiman & Associates) for the accused.

KN Segara J:

[1] The accused, a foreigner from Taiwan, was originally charged for trafficking in 1637.5g of ketamine under s 39B(1)(a) of the Dangerous Drugs Act 1952 (exh P2). He claimed trial to the said charge but he was subsequently offered the choice of an alternative charge for unauthorized possession of 1637.5 gms of Ketamine, that is, an offence under s 12(2) and punishable under s 12(3) of the said Dangerous Drugs Act 1952 (exh P3).

[2] The accused pleaded guilty to the alternative charge and admitted the facts adduced by the learned DPP (exh P4). He also admitted to the relevant exhibits seized from him and produced in court. The accused was found guilty and convicted on the alternative charge. He was sentenced to five years imprisonment from his date of arrest. Briefly, the facts are as follows.

[3] The accused met a person called Michael at a pub in Taiwan. He had known Michael for a year prior to the date of his arrest. Michael requested the accused to

bring for him from Malaysia the drug ketamine, and he promised to reward the accused if he brought the said drug for him. The accused agreed to bring the said drug for Michael from Malaysia.

[4] The accused obtained the supply of 1637.5g of ketamine and was expected to return to Taiwan on 31 March 2005. The drug was in three plastic packets. The accused concealed the three plastic packets on this person by tying one plastic packet to each calf of his legs, and placing the third packet very close to his penis, within his boxer shorts underwear (exh P6). All of this was done in order to avoid detection by the police, of the drug in his possession, when leaving the country to take his flight back to Taiwan.

[5] On 31 March 2005, at about 2.44pm, when the accused reached Gate 34 KLIA, he was detained by several auxiliary police personnel. Upon the accused being asked what he had at the calf of each of his legs and near his private part, he replied 'Money, Money'. The police, thereafter, made a thorough examination of the accused's body and discovered the three packets of drug. The police arrested the accused, seized the three packets of drug, his passport and flight ticket.

[6] The drug seized was sent to the chemist, who upon analysis confirmed the drug to be Ketamine and the total weight to be 1637.5g.

[7] The facts adduced clearly showed that the accused was not an innocent carrier and he could have been successfully prosecuted for the offence of trafficking. He was lucky that the prosecution offered him the choice of an alternative charge to which, without hesitation, he pleaded guilty.

[8] The accused's admission in mitigation that what he did was a foolish thing and was done out of desperation because he owed the banks in Taiwan, does not help in any way lessen his culpability to warrant a lighter sentence. The further disclosure that his ticket and accommodation was paid for, coupled with the fact he was already paid a down-payment of Taiwanese dollars 100,000, goes to show he is very much involved in organized drug activity. All attempts to rid the scourge of drugs on society will be made nugatory if lenient sentences are imposed on offenders who are backed by organized drug rings and whose identity the offenders fail to reveal with sufficient particulars to help the authorities to bring them to book.

[9] Public interest calls for a deterrent sentence, and to my mind the sentence of five years imprisonment is manifestly low when the facts seem to suggest the offence of trafficking had been committed. Fortunately for the accused, that is the maximum term of imprisonment permitted under the law. The accused has escaped facing an offence with a death penalty due to the benevolence of the Public Prosecutor in offering him the choice of a lesser charge. Nevertheless, the courts must ensure no wrong signals are sent to foreigners that Malaysia is a haven for drug activities, with risks of heavy sentence minimal, thus encouraging these foreigners to show contempt for our laws on drugs and its effective enforcement, to our detriment and well being.

A **[10]** Guilty and convicted on alternative charge. Sentenced to five years' imprisonment from date of arrest.

Accused sentenced to five years' imprisonment.

B Reported by John Paul Simon

C

D

E

F

G

H

I